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Docket No.: KCC-15,512



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert Cosmo Di LUCCIO et al.

Serial No.: 09/859,665

Filing Date: 18 May 2001

Title: MENSES SPECIFIC ABSORBENT SYSTEMS

Customer No.: 35844

Group No.: 3761

Examiner:
Catharine L. Anderson

REPLY BRIEF UNDER 37 C.F.R § 41.41

Mail Stop Appeal Brief - Patents

U.S. Patent and Trademark Office

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Dear Sir:

Applicants herewith file their reply brief in the above-identified case, responsive to the Examiner's Answer dated 14 December 2005. Please charge any amount owed, or credit any overpayment, to Deposit Account No. 19-3550.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

14 Feb. 2006

14 Feb. 2006
Date

Marcell J. Peterson
Signature

I. BLANEY ET AL DOES NOT DISCLOSE WATER-SOLUBLE CHITOSAN

The Examiner relies on Blaney et al. as disclosing chitosan. According to the Examiner, the chitosan disclosed in Blaney et al. is a water-soluble gelling agent as described in Applicants' Claims 1 and 32.

To the contrary, Blaney et al. discloses chitosan only as a superabsorbent material polymer (Col. 6, lines 29-40). The term "chitosan" does not appear in any other context. Blaney et al. defines "superabsorbent material" as being limited to a water-insoluble material:

The term "superabsorbent" or "superabsorbent material" refers to a water-swellaable, water-insoluble organic or inorganic material capable, under the most favorable conditions, of absorbing at least about 20 times its weight and, more desirably, at least about 30 times its weight in an aqueous solution containing 0.9 weight percent sodium chloride (Col. 6, lines 12-17).

Thus, there is no possible basis for concluding that the superabsorbent materials disclosed in Blaney et al. are water-soluble. Furthermore, it is well known in the art that water-insoluble superabsorbent materials are used for entrapping and maintaining aqueous liquids within an absorbent core of a garment, keeping them away from a wearer's skin. A water-soluble material which dissolves and becomes part of the liquid would not perform this function.

Blaney et al. further describes how chitosan and other polymers are rendered water-insoluble by cross-linking, so they can be used as superabsorbent materials:

The term "cross-linked" refers to any means for effectively rendering normally water-soluble materials substantially water-insoluble but swellaable. Such means can include, for example, physical entanglement, crystalline domains, covalent bonds, ionic complexes and associations, hydrophilic associations, such as hydrogen bonding, and hydrophobic associations or Van der Waals forces (Col. 6, lines 22-28).

In summary, Applicants' claims require the gelling agents to be water-soluble. Blaney et al. requires the superabsorbent materials (including chitosan) be in a

water-insoluble form. The terms “water-soluble” and “water-insoluble” are mutually exclusive and do not overlap. No claim is anticipated by Blaney et al., and the rejection under 35 U.S.C. §102(e) should be reversed.

II. HAMILTON ET AL. DOES NOT DISCLOSE DISPERSING A TREATMENT CHEMISTRY ON A SURFACE OR WITHIN INTERSTICES OF FIBERS FORMING A NONWOVEN WEB

Independent Claim 15 recites a step of dispersing a treatment chemistry on a surface or within interstices of fibers forming a nonwoven web material. As explained on page 4, line 21 – page 5, line 12:

The treatment chemistries may be disposed on the interior of the polymeric fibers, on the surface of the polymeric fibers or within the nonwoven web material, such as in the interstices formed by the polymeric fibers . . .

Thus, it is clear that the treatment chemistry is applied to the nonwoven web either as a surface treatment, or somewhere within the nonwoven web. A treatment chemistry that is not a surface treatment, and is not within the interstices of the nonwoven web, cannot anticipate Claim 15.

In the Examiner’s Answer, the Examiner characterizes Hamilton et al. as disclosing the foregoing claim limitation at Col. 47, lines 33-40. To the contrary, the cited passage states the following:

In Example 15, a tampon is filled with nits with or without superabsorbent and a nonwoven cover stock is wrapped around the nits for containment (Col. 47, lines 33-35).

In Example 16, a tampon is filled in the center with nits with or without superabsorbent and a layer of airlaid or fluff batt is wrapped around the nits and a cover stock material is attached to the airlaid or fluff batt (Col. 47, lines 36-40).

Referring to Applicants’ opening brief, the Examiner does not dispute that a) the treatment chemistry (chitosan) of Hamilton et al. is contained within individual particulate fibrous nits, and b) the nits themselves do not constitute a nonwoven web material. Furthermore, Hamilton et al. characterizes the fibrous nits as free flowing particles (Abstract).

Given that the nits are free flowing particles, and the treatment chemistry is contained within the nits, it is not accurate to characterize the treatment chemistry as a “surface treatment” of the nonwoven web which folds over the nits. The disclosed treatment chemistry is not applied to the nonwoven web material. While the nits may brush against and touch the nonwoven web material, they flow freely, and are free to move away from the nonwoven web material.

Given that the nits are free flowing particles, and the treatment chemistry is contained within the nits, it is also not accurate to characterize the treatment chemistry as contained “within the interstices” of fibers forming the nonwoven web material. Particles contained within fiber interstices would have little or no movement, and would not be “free flowing” as required by Hamilton et al.

Accordingly, Hamilton et al. plainly does not disclose the limitations of Claim 15. No claim is anticipated, and the rejection under 35 U.S.C. §102(e) should be reversed.

III. CONCLUSION

Given that both claim rejections are based on 35 U.S.C. §102(e), the review of this appeal should focus on whether or not the strict requirements for anticipation rejections have been satisfied. A claim is anticipated only if each and every claim element is found in a single prior art reference. MPEP 2131. A claim is not anticipated if one or more claim elements are missing from the prior art disclosure.

In the present case, the Examiner has seriously misconstrued the prior art in an attempt to find claim elements that are nowhere disclosed. As to Blaney et al., the Examiner misconstrued a teaching of “water-insoluble” superabsorbent materials as really meaning “water-soluble”, and has not explained how the two opposite terms can be reconciled. As to Hamilton et al., the Examiner misconstrued a teaching of “free flowing” particulate nits containing a treatment chemistry and wrapped in a nonwoven web, as teaching application of the treatment chemistry to the nonwoven web surface, or within the interstices of nonwoven web fibers, either of which would maintain the treatment chemistry in a fixed location.

Serial No.: 09/859,665

KCC-15,512

Accordingly, Applicants respectfully urge the Board to reverse both rejections based on 35 U.S.C. §102(e).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maxwell J. Petersen".

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